IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 669 of 1997

MUNNILAL SUKAI HARIJAN
Versus
STATE OF GUJARAT

Appearance:
Shri MM Devani for Shri YS Lakhani for the Petitioner.
Shri VB Gharania, AGP for the respondents.

CORAM : MR.JUSTICE S.K.KESHOTE
Date of Order: 3/5/99

C.A.V. JUDGMENT

1. Heard the counsel for the parties. The petitioner employee of the respondent filed this Special Civil Application under Article 226 of the Constitution of India and prayed for directions to the respondent to allow him to resume his duty. From the title of Special Civil Application I find that he belongs to scheduled caste. This fact is not disputed by the respondent in the reply to this Special Civil Application.

2. This writ petition has come for admission before this Court on 24.1.1997. Notice was issued to the respondent returnable on 14.2.1997. Direct service was permitted. Thereafter, the matter was adjourned from time to time and lastly it was listed in Court on 28.7.1997 for admission. Prior to this date, on 11.3.1997 affidavit-in-reply has been filed by the respondent. The respondent in paragraph 3 of the affidavit-in-reply stated that, affidavit-in-reply is filed with a limited purpose to oppose the admission and grant of any interim relief. Leave to submit detailed affidavit-in-reply was reserved. On 28.7.97 as nobody was present on behalf of the respondent, this Court has been pleased to admit the same. Thereafter, this matter was listed in Court on 24.6.1998. From 28.7.1997 to 24.6.1998 the respondent has not cared to file parawise reply to this Special Civil Application. On 26.6.1998

this Court ordered "This matter be fixed for final hearing in 2nd week of July, 1998".

3. Thereafter, now in 1999 this matter has come for hearing, but parawise reply to the same has not been filed. Whatever denial of the contents of Special Civil Application made in affidavit-in-reply is hardly of any substance. There is no specific denial of the averments made by the petitioner in this Special Civil Application.

4. So, the following facts are taken to be undisputed.

The petitioner was taken on daily wages by the respondent No.1. He has completed five years of service on 2.1.1987. He was working in New Civil Hospital. The petitioner was involved in Criminal Case for the offence under Sections 379 and 511 of the IPC and he has been arrested by the police in connection with the criminal case and then he was acquitted. This has been happened in the year 1995.

It is not in dispute that till the date the petitioner was arrested in criminal case, he was continuously working may be on daily wages with the respondent. On the date of his arrest he was having 10 years of service as daily wager. After release on bail the petitioner made an application to the respondent requesting him that, he may be taken back on duty. This application of the petitioner was replied by the respondent by his letter dated 2.12.1992. He was not taken on duty on the ground, first, a criminal case is pending against him in criminal court and so long as this matter is not decided, he cannot be taken on duty. The petitioner was acquitted in criminal case by the Metropolitan Magistrate, Court No.2, Ahmedabad under his decision dated 13.10.1995. After his acquittal the petitioner vide his application dated 20.11.1995 requested the respondent to take him back in service. The service of the petitioner was not terminated by the respondent. He has sent legal notice to the respondent through advocate on 22.1.1996, but he was not taken back in the service. Hence, this Special Civil Application before this Court.

5. In reply to this Special Civil Application, it is stated that the petitioner was arrested for the criminal charge in Criminal Case No.5496/92 which was instituted by the police.

6. The petitioner was not temporary Chowkidar, but

he was on daily wages Rojamdar and his services came to an end by inaction/omission on the part of the petitioner. Lastly, it is stated that their office was not informed regarding the judgment in Criminal Case No.5496/92. However, the petitioner submitted xerox copy without attestation of the said judgment on 28.11.1995 i.e. after lapse of more than a month.

7. It is not the case of the respondent that the petitioner has not been acquitted in criminal case. It is also not the case of the respondent that the petitioner firstly on his released on bail and secondly on his acquittal, has not approached to the respondent for his reinstatement in the service. It is also not in dispute that the petitioner was not taken back in the service on the ground that criminal case is pending. The respondent has made clear to the petitioner that, he will not be taken back in the service till criminal case is decided.

8. From the averments made in this Special Civil Application and reply of the respondent, I find that the stand which has been taken by the respondent to justify its action not to take the petitioner back in the service was not a stand taken by him initially. The petitioner was not allowed to resume his duty after his enlargement on bail by the respondent on the ground that against him, criminal case is pending. If it would have been the case of automatic end of the service of the petitioner then it would have been made it clear at that very point of time. The respondent was of the opinion that so long as criminal case is continued the petitioner cannot be taken back in service. It is highly arbitrary and unfair on the part of the officer of welfare State to take somersault.

9. Otherwise also the petitioner was serving for 10 years on daily wages and the Government has taken a decision to confer benefits akin to the regular employee to the daily wagers also, however subject to fulfillment of the conditions as prescribed therein. Reference may have in this respect to the Resolution dated 17.10.1988 of the Government. One of the conditions was that daily wagers is in the employment of the respondent as on 1.10.1988. That condition is fulfilled by the petitioner. It is unfortunate that necessary orders in case of the petitioner has not been passed conferring upon him the benefits under the resolution dated 17.10.1988 before he was arrested. But, the respondents cannot be allowed to take benefit of their own wrong, inaction or omission. Each case has to decide on the

basis of its own facts. Defence which is now taken by the respondent is absolutely manufactured and concocted. Otherwise also, this defence is not tenable in view of the resolution of the Government dated 17.10.1988. The petitioner but for the criminal case would have continued in service with the respondents and would have been given all the benefits of the resolution dated 17.10.1988. After his release on bail from criminal case, the petitioner should have been taken back in the service or whatever legal course is available to the respondents, it could have been taken. It is understandable that the services of the petitioner could have been terminated, but it has not been done. In the present case, the respondent was of the opinion that, so long as criminal case is continued against the petitioner, he cannot be taken back in the service. In view of the facts of this case, now the defence taken by the respondent cannot be accepted and that too to the extent of to non suited a low paid employees at this stage. From the record of this case and more particularly, letter of the respondent dated 2.12.1992, it is clear that the petitioner has to be taken back in the service after termination of criminal case in his favour. When the petitioner has been acquitted in criminal case, it is really shocking and not befitting to the office of the welfare State to disown their own commitment which they made to the poor low paid employee.

10. Otherwise also, if we go by reformatory theory to be applied in the case of a person who has been convicted, it is also otherwise fittest of the fit case where the respondents should have taken the petitioner back in the service. If in this case, this approach is not made then certainly there are all the possibilities of turning of the petitioner to be an hardened criminal or thief or robber or dacoit. This court cannot be ignorant of the fact that the petitioner is having 10 years service may be a daily wager and entitled for the benefits under the resolution dated 17.10.1988.

11. In the result, this Special Civil Application succeeds and the same is allowed. Respondents are directed to forthwith reinstate the petitioner back in the service and to consider his case for conferment of the benefits as per resolution dated 17.10.1988. Till this exercise is undertaken, the petitioner may be paid minimum of the pay-scale of Class-IV. His case for giving him benefits under the resolution dated 17.10.1988 is to be finalised within a period of two months from the date of receipt of the writ of this order and all the monetary benefits which are legally found payable to him

be given to him within one month. The petitioner will be entitled for actual benefits of the pay-scale etc. from the date of filing of this writ petition before this court i.e. 20.1.1997. For the period from the date of his discontinuation from the service till 1997, he shall be given only daily wages as revised from time to time. However, he shall be given all notional benefits under the resolution dated 17.10.1988 upto date of filing of the writ petition. It is the case where the employee who was not taken back in service even after his acquittal in criminal case, he was made to suffer to the extent of filing of this petition which costs to him heavily.

12. It is really a matter of realisation and feeling how this person would have arranged the amount for filing of this petition. It is not the case where the petitioner straightway come to the court in the matter. Before coming to the court he has made representation to the respondent. Then, he has sent legal notice to the respondent. He has waited for considerable long time to see that the respondents have taken the decision to take back in the service, but nothing has been done. Then, he has approached this court. So, from this fact it can be inferred that he was constrained and put in such condition by the respondent where this litigation become unavoidable for him. The counsel of the petitioner on being asked by the court, made the statement that the petitioner has incurred Rs.5000/- towards the expenses of this litigation under the components of professional fees and legal expenses of filing of this petition.

13. The respondent is directed to pay to the petitioner Rs.5000/- as the cost of this petition. This amount has to be deposited by the respondent in this court within a period of one month from the receipt of the order. For the disbursement or payment of this amount the court will pass necessary order afterwards.

14. Learned counsel for the petitioner prayed for awarding interest on the amount of salary etc. to be paid to the petitioner. But in the facts of this case, I do not find any justification to grant this prayer. In the result, this Special Civil Application is allowed in the aforesaid terms. Rule is made absolute accordingly.

(S.K.Keshote,J.)

(pathan)